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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,651	04/16/2001	Takeshi Fukuda	05453.0037	3687

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EXAMINER

WELLS, LAUREN Q

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Applicant(s)

09/834,651

Applicant(s)

FUKUDA ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the correspondence address --

THE REPLY FILED 29 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-3 and 6-10.Claim(s) withdrawn from consideration: 4 and 5.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

SREENI PADMANABHAN  
PRIMARY EXAMINER

6/12/03

Continuation of 3. Applicant's reply has overcome the following rejection(s): the 35 USC 112, 1st paragraph and 2nd paragraph rejections, over the phrase, "produced using a source material that will introduce phosphate ions"..

Continuation of 5. does NOT place the application in condition for allowance because: a) the 35 USC 112 and 103 rejections are maintained for reasons of record in the Office Action mailed 1/29/03, Paper No. 8; b) Applicant argues that the phrase "the weight of said compound used in the calculation is the weight of P<sub>2</sub>O<sub>5</sub>" is clear. This argument is not persuasive. The Examiner respectfully points out that in going from any variety of starting materials that comprise phosphoric compounds to produce an end product of P<sub>2</sub>O<sub>5</sub>, numerous different reactions may occur with the phosphoric compounds of the starting material. Thus, relying on P<sub>2</sub>O<sub>5</sub> as a means of measurement is not an absolute, especially since the phosphoric compound could be P<sub>2</sub>O<sub>5</sub>. Applicant argues, the that Examples 2 and 3 of Shibasaki et al. do not teach the instant aspect ratio. This argument is not persuasive. The Examiner respectfully reminds Applicant that a reference is not limited to its examples, but is considered for what it teaches, as a whole, to one of ordinary skill in the art. In the instant case, Shibasaki et al. teach that their particles can have a diameter of from 0.5-3.5um. The Examiner respectfully reminds Applicant that it has been held that where the general conditions of a claim are taught, discovering an optimum range is within the skill of the artisan. In re Aller.